

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
Level 3 Communications, L.L.C.	:	
	:	08-0261
Request For Information Regarding	:	
Compliance with the Commission	:	
Order in Docket No. 07-0277	:	

ORDER

By the Commission:

On June 25, 2007, the Administrative Law Judge (hereafter "ALJ") proposed an Order in *Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC –vs- Level 3 Communications, LLC, Verified Complaint and Request for Declaratory Ruling pursuant to Sections 13-515 and 10-108 of the Illinois Public Utilities Act* (Docket No. 07-0277). The Order was adopted in its entirety by the Commission on July 10, 2007. The Order directed Level 3 Communications, L.L.C. (hereafter "L3") to maintain the direct physical interconnection with Neutral Tandem, Inc., and Neutral Tandem-Illinois, LLC (hereafter "NT") "until a further order from the Commission, and for at least as long as [L3] maintains a direct physical interconnection by which it delivers traffic to NT for transiting."

The Order found as follows:

[T]he [FCC] rule [governing liability for reciprocal compensation] does not impose reciprocal compensation obligations with respect to transiting the traffic. [fn] In addition, this Commission previously has rejected attempts to impose reciprocal compensation on transit providers. [fn] Therefore, NT is not obligated to pay reciprocal compensation to Level 3.

...

[T]he per-minute surcharge proposed by Level 3 in its letter dated May 8, 2007, also is impermissible. It is little more than a thinly-veiled attempt to impose a reciprocal compensation-like obligation upon NT under a different label. Such charges have been disallowed in previous decisions.

Order at 9-10 (footnotes omitted)

Based upon these findings, the Commission ordered as follows:

... Level 3 shall not require NT to pay or collect reciprocal compensation for traffic not originated by NT. ... Level 3 shall not require NT to pay any fee or other compensation, either on a per-minute basis or otherwise, for traffic delivered to Level 3 for termination on the Level 3 network.

...
IT IS ... ORDERED that Level 3 Communications, L.L.C. cease and desist from requiring Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC to pay or collect reciprocal compensation for traffic not originated by Neutral Tandem, Inc. and Neutral Tandem-Illinois, LLC, or to pay any fee or other compensation, either on a per-minute basis or otherwise, for traffic delivered to Level 3 Communications, L.L.C. for termination on its network.

Order at 12, 14

The Commission thus resolved, with clarity, the question of whether L3 has any right to levy charges upon NT for transit traffic delivered by NT to L3 for termination. L3 has no such right.

As identified in a Telecommunications Division Staff report dated March 31, 2008, NT has publicly alleged that, subsequent to, and notwithstanding, the entry of the Commission's Order, L3 continues to bill it for Illinois intrastate transit traffic delivered by NT to L3 for termination. According to Staff, NT's allegations are supported both by a detailed affidavit and by copies of invoices from L3 to NT, which post-date the Order by some months. Staff, therefore, recommends that the Commission require Level 3 to produce certain information and documents relevant to its compliance, or lack thereof, with the Commission's order. Staff has prepared a set of Data Requests calculated to elicit information necessary to assess Level 3's compliance. Staff has prepared the necessary Data Requests and attached them as Exhibit No. 1 to its Report.

Section 5-101 of the Public Utilities Act, which is applicable to telecommunications carriers that provide competitive services, provides in relevant part:

Every public utility shall obey and comply with each and every requirement of this Act and every order, decision, direction, rule or regulation made or prescribed by the Commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of this Act and every such order, decision, direction, rule or regulation by all of its officers, agents and employees

Section 5-101 thus obligates L3 to comply with the Commission's Order and with Data Request issued by the Commission for the purpose of assessing such compliance.

Section 5-109 provides, in relevant part, that:

The Commission shall have authority to require any public utility to file ... special reports concerning any matter about which the Commission is authorized by law to keep itself informed. All reports shall be under oath.

...

Any public utility which fails to make and file any report called for by the Commission within the time specified; or to make specific answer to any question propounded by the Commission within 30 days from the time it is lawfully required to do so, or within such further time, not to exceed 90 days, as may in its discretion be allowed by the Commission, shall forfeit up to \$100 for each and every day it may so be in default if the utility collects less than \$100,000 annually in gross revenue; and if the utility collects \$100,000 or more annually in gross revenue, it shall forfeit \$1,000 per day for each and every day it is in default.

Any person who willfully makes any false return or report to the Commission or to any member, officer, or employee thereof, any person who willfully, in a return or report, withholds or fails to provide material information to which the Commission is entitled under this Act and which information is either required to be filed by statute, rule, regulation, order, or decision of the Commission or has been requested by the Commission, and any person who willfully aids or abets such person shall be guilty of a Class A misdemeanor.

The Commission finds that the Staff Report recounts allegations which constitute a basis for requiring Level 3 to produce information and documents relating to its compliance, or lack thereof, with the order in Docket No. 07-0277, and that Level 3 should be required to provide detailed, accurate responses to the Data Requests attached to the Staff Report.

The Commission, being fully advised in the premises, is of the opinion, and finds that:

- (1) Level 3 Communications, L.L.C. should be made a respondent to this proceeding;
- (2) the Commission has jurisdiction over the subject matter in and the respondent to this proceeding;
- (3) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) the Staff Report dated March 31, 2008 should be made a part of the record in this proceeding;

- (5) the Commission should require Level 3 to produce certain information and documents relevant to its compliance, or lack thereof, with the Commission's order; such production to be made on oath or attestation by a responsible corporate official. Staff has prepared a set of Data Requests calculated to elicit information necessary to assess Level 3's compliance;
- (6) the Commission should require Level 3 to answer any follow-up questions posed by Staff after the initial Data Requests have been answered by Level 3 without any further order of the Commission.

IT IS THEREFORE ORDERED that Level 3 Communications, L.L.C. is directed and required to produce to Commission Staff on or prior to May 9, 2008, information and documents responsive to the Data Requests contained in Exhibit 1 of the Staff Report dated March 31, 2008; such production to be made on oath or attestation by a responsible corporate official.

IT IS FURTHER ORDERED that Level 3 Communications, L.L.C. is made a respondent to this proceeding.

IT IS FURTHER ORDERED that the Staff Report dated March 31, 2008 is made a part of the record in this proceeding.

IT IS FURTHER ORDERED that respondent shall answer any follow-up questions posed by Staff after the initial Data Requests have been answered by respondent without any further order of the Commission.

IT IS FURTHER ORDERED that failure of respondent to respond fully, accurately, completely, and timely to the attached Data Requests, or to otherwise comply fully with the terms of this order may result in civil penalties imposed pursuant to, or other applicable sanctions provided for by applicable provisions of the Public Utilities Act.

IT IS FURTHER ORDERED that, subject to Section 10-110 of the Public Utilities Act, this Order is final; this Order is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of April, 2008.

(SIGNED) CHARLES E. BOX

Chairman